

19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 03.8.2001

O.A. No. 81/99

Mainudeen son of Shri Bhav Khan aged about 47 years resident of near Railway Club, Rattangarh, at present employed on the post of Shunter in the office of Shed Incharge, Loco Shed, Rattangarh, Northern Railway.

... Applicant.

v e r s u s

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.

... Respondents.



Mr. J.K. Kaushik, Counsel for the applicant.

Mr. Manoj Bhandari Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed for a direction to the respondents to interpolate the name of the applicant in the panel dated 6.9.95 (Annexure A/1) as per his merit position and allow him all consequential benefits at par with his next junior. The applicant also has prayed for modification of order dated 26.03.95 vide Annexure A/2.

2. As stated by the applicant, he was working as Shunter with

effect from 24.04.92. In the year 1995, a selection was conducted for promotion to the post of Goods Driver in the scale Rs. 1320-2200. The applicant appeared both for written test as well as viva voce test, and accordingly, his name was placed in the panel dated 07.06.95 (Annexure A/3) at sl. No. 165. But as per the letter dated 4.4.84 (Annexure A/4), there was a direction to all the Divisions of the Railways for conducting a screening test for promotion to the post of Goods Driver, since the said post was a safety category. Accordingly, a screening test was held and a panel was prepared vide Annexure A/5 dated 6.5.95, in which the name of the applicant was not found. Some other candidates, who were also declared failed in the screening test, filed an O.A. No. 479/95 before this Tribunal, challenging the process of conducting the screening test. This Tribunal vide its order dated 12.09.97 (Annexure A/6) allowed the said application, declaring the screening test as illegal and directed the respondents for constituting a proper Committee for fresh screening. Accordingly, a Committee was constituted, and a screening test was conducted on 26.11.97. The applicant also was called for screening test and was declared successful. But by interpolating the name of other persons, who had filed OAs against the panel dated 6.9.95, an order was issued vide Annexure A/2 dated 26.3.98 for promotion to the post of Goods Driver. The applicant's name was not included in the said order only because he did not prefer any application before this Tribunal alongwith other applicants in the year 1995. But the applicant belongs to the same and similar circumstances as that the applicants in OA No. 479/95 and batch belonged. Therefore, not interpolating the name of the applicant in the panel dated 6.9.95 vide Annexure A/1 is illegal.

4. The applicant also further stated that after the judgement

A

of this Tribunal in O.A. No. 479/95 and the batch, the applicant's name was placed in the eligibility list dated 12.11.97 vide Annexure A/7 for the purpose of conducting the screening test. The applicant appeared in the screening test and as per the result sheet dated 26.11.97 (Annexure A/8), the applicant was declared suitable for the purpose of promotion by placing his name at sl. No. 17. But the applicant was not promoted only because there was no direction in his favour at the hands of this Tribunal. Ultimately, promotion was given only to those persons, in whose favour there was a direction of this Tribunal in OA No. 479/95 and batch. Accordingly, the applicant submitted that the respondents may be directed to promote the applicant alongwith other persons similarly situated by interpolating his name in the order dated 26.03.98 (Annexure A/2).

4. The respondents by filing reply denied the case of the applicant. They contended that this application is liable to be dismissed for suppressing certain material facts. They stated that the applicant has suppressed filing of O.A. No. 451/95, which was pending even as on the date of filing the reply. The applicant also suppressed that vide notification dated 22.1.97 (Annexure R/1), he being eligible, was asked to appear in the written test. He was at sl. No. 75 of the said letter. But the applicant refused to appear in the said written test by filing a letter vide Annexure R/2, stating that he was not appearing in the written test, since his case was pending before this Bench. Thereafter, again the applicant was called to appear in the supplementary written test on 13.06.98, and thereafter, for viva voce test on 11.11.98. The applicant appeared for those tests. He also appeared for screening test, and accordingly, a

R

provisional panel for the post of Goods Driver in the grade Rs. 5000-8000 was issued vide Annexure R/3 dated 17.02.99. Thereafter, the applicant was promoted and transferred vide Annexure R/4 dated 19.02.99 as Goods Driver. But the applicant refused to accept the promotion on transfer for domestic reason and also for the reason that his wife was sick, and accordingly stated that he was ready to undergo one year's bar, vide his letter dated 24.02.99 (Annexure R/5). On the basis of this letter, the department issued an order dated 25.05.99 (Annexure R/6) by accepting the plea of the applicant, debarred his promotion for one year upto 23.02.2000. It is stated that thereafter, the applicant has been promoted with effect from 23.02.2000. On the basis of these facts, the department contended that the applicant is not entitled to any relief, and he has suppressed these material facts. They have also stated that the applicant's seniority on the basis of the panel dated 19.02.99 is maintained. When the applicant has accepted his promotion with effect from 23.02.2000, he cannot claim any benefit of the order in O.A.No. 479/95, and hence, this application is liable to be dismissed. They have also stated that the relief for interpolating the name of the applicant in the panel dated 06.09.95 cannot be done after the lapse of 4 years. Therefore, the application deserves to be dismissed on the ground of limitation. It is further stated in the reply that when the applicant was working as Shunter, he was awarded a punishment of reduction of pay for a period of three years vide NIP dated 8.4.96, and on an appeal filed by him, the punishment was reduced from 3 years to 6 months vide letter dated 4.6.96 / 17.6.96. Though the applicant appeared in the written test, viva voce test and screening test, but his name could not be found in the panel of Goods Driver issued on 06.09.95 (Annexure A/1). It is stated that the applicant did not file any application before this

Tribunal, challenging the result of the Screening Committee and as such, he was not entitled to any relief similar to other applicants, who had challenged the same. Since the other applicants had obtained an order at the hands of this Tribunal, the applicant could not be interpolated in the panel dated 06.09.95. It is also stated that the applicant was also screened in pursuance of the judgement and order dated 12.09.97 in OA No. 479/95, but he is not entitled for placing his name in the panel, since he did not approach this Tribunal. The applicant himself was sleeping over his right, and there is no general direction by this Tribunal for screening the applicant and placing his name in the panel. Therefore, the applicant is not entitled to any relief, as prayed for. At any rate, the applicant refused to take written examination in pursuance of the subsequent notification vide Annexure R/1 dated 22.01.97. The applicant also refused his promotion on the basis of panel dated 17.02.99 on his own undertaking that his promotion could be barred by one year, and immediately thereafter, the applicant has been promoted with effect from 23.02.2000, granting him seniority from the date of the panel. Hence, this application is liable to be dismissed.

6. Heard and perused the records.

7. On the basis of the arguments addressed at the Bar and also on the basis of the pleadings on both the sides, it is admitted that the applicant had taken written test, viva voce test and the screening test, but his name could not be found in the panel dated 06.09.95. Some of the persons, whose names were not placed in the said panel, filed an O.A. No. 479/95 and the batch, and this Tribunal vide order dated 12.09.97 found fault with the Screening test conducted by one officer instead of a Committee constituted.

H

Since a Committee was not constituted, the result of such screening test was declared as illegal. Accordingly, this Tribunal passed the following order :-

" 6. In the circumstances of the present case, we direct that the respondents shall conduct a fresh screening, through a Committee consisting of officers mentioned in para-3 of Annex. R-2, within a period of one month from the date of receipt of a copy of this order. The screening should be conducted strictly in accordance with the instructions contained in Ann. R-2. If the applicant is found suitable on the basis of such screening, he would be entitled to inclusion of his name in Ann.A-1 dated 6.9.95. The applicant has already been continuing on the post of Goods Driver on adhoc basis and also on the basis of the interim direction issued by the Tribunal. If the applicant is found suitable for promotion on the basis of the result of the screening to be conducted in accordance with the directions given above, the applicant shall be granted promotion to the post of Goods Driver from the date from which person junior to him has been granted promotion."

8. Though there was no direction, as to the other persons including the applicant, who were also declared failed as per result of the Screening Committee of the one officer, to call for fresh screening test, the applicant was called for screening test, and accordingly, the result was published on 26.11.97 vide Annexure A/8. The applicant was declared suitable for promotion vide item No. 17 of the said result sheet. But his name was not included in the panel, as contended by the respondents, only because there was no direction in his favour from this Tribunal in OA No. 479/95. But we find that this Tribunal vide judgement and order dated 12.09.97 allowed the said OA No. 479/95, declaring the entire screening test conducted by one officer as unsustainable, and accordingly directed to constitute a Committee for fresh screening. As per the direction of this Tribunal, a fresh Committee was constituted and the applicant was called for screening test, and he was found suitable by the result declared on 26.11.97 vide Annexure A/8. Only because the applicant did not approach this Tribunal, the applicant has been denied the

I
15

inclusion of his name in the panel dated 06.09.95 (Annexure A/1) by way of interpolation, as has been done in the case of others, by issuing Annexure A/2 dated 26.03.98. It is to be mentioned at this stage itself that the entire screening test conducted by one person has been set aside by this Tribunal, including the result pertaining to the applicant. This Tribunal found fault with the constitution of the Screening Committee itself, and accordingly, the applicant was rightly called alongwith the other candidates, who had filed OAs before this Tribunal, and his name also should have been placed in the panel, since he was declared passed vide Annexure A/8. Unfortunately, the department did not include his name in the panel dated 06.09.95 only on the ground that he was not one of the applicants before this Tribunal. In this view of the matter, when the applicant belongs to the same circumstances, not placing his name in the panel vide Annexure A/1 dated 06.09.95 after declaring him successful in the screening test vide Annexure A/8 would be discriminatory and violative of Articles 14 and 16 of the Constitution of India. It is only in these circumstances, the applicant has rightly challenged the order dated 26.03.98 (Annexure A/2) in which his name was not interpolated, and the names of those who had filed OAs, had been interpolated in the panel dated 06.05.95. The present application, taking from the date Annexure A/2 dated 26.03.98 is issued, is within time. This application is filed on 23.03.99 within the period of one year from Annexure A/2 dated 26.03.98. Therefore, the contention of the respondents that this application is barred by time, cannot be accepted. In these circumstances, we are of the considered view that the applicant's name was required to be interpolated in the panel dated 06.09.95 by modifying the order dated 26.03.98. Since the applicant also had passed the written test and the screening test, absolutely there was no impediment for the respondents in

M

not including his name in the panel. Therefore, we find fault with Annexure A/2 dated 26.03.98, and accordingly, in our considered opinion, the applicant is entitled to his notional seniority as per his ranking with effect from the date the other persons, whose names were interpolated in the panel dated 06.09.95 vide Annexure A/1 on the basis of Annexure A/2 dated 26.03.98.

9. However, the contention of the respondents is that the applicant is not entitled to any relief, since he refused to take a subsequent test on the ground that his application is pending before this Tribunal. They also stated that the applicant has refused his promotion on the basis of the promotion order dated 19.02.99 for a period of one year. Therefore, he has rightly been promoted after the said period of one year with effect from 23.02.2000, and in view of this subsequent development, the applicant is not entitled to any relief, as prayed for in the O.A. The learned counsel for the respondents relied upon the judgements of Hon'ble the Supreme Court reported in (1986) 4 SCC 268 (Miss Neelima Shangla vs. State of Haryana & Ors.) and (1994) 6 SCC 51 (A. Hamsaveni and Others vs. State of T.N. and Another), contending that the applicant has abandoned his right by refusing his subsequent promotion order, and this application is liable to be dismissed on the ground of laches only. He also relied upon the judgement of Hon'ble the Supreme Court reported in JT 1999 (2) SC 288 (Ferro Alloys Corpn. Ltd. & Anr. vs. U.O.I. & Ors.), contending that the applicant did not file any writ petition alongwith others in 1995. Therefore, this application is liable to be dismissed. We have seen all these judgements, but these judgments do not apply having regard to the peculiarities of this case. Though the applicant did not file an O.A. alongwith others, when the O.A. No. 479/95 was filed by others, but treating the

direction of this Tribunal as general directions, the department conducted fresh screening, in which the applicant was called for screening test, and he was declared successful vide Annexure A/8. If that is so, he should have been given promotion alongwith others, and his non-promotion alongwith juniors inspite of his passing written test and screening test would be discriminatory and violative of Articles 14 and 16 of the Contitution of India. Hence, in our considerd opinion, these subsequent events could be considered only to deny the applicant the arrears that would have flown from the relief granted in this case. When the applicant was promoted, and if he refused such promotion order vide Annexure R/4 dated 19.02.99 by filing a representation vide Annexure R/5 dated 24.02.99, stating that he was not in a position to accept the promotion for some domestic reasons, and he was ready to undergo one year's bar for promotion, the applicant disentitles himself for any arrears as such. If the applicant had approached this Tribunal being aggrieved by, non-inclusion of his name in the panel on the basis of the original screening test, as has been done by others, the things would have been different. But he has not done so. We are granting the relief as prayed for by him only on technical ground for violation of Article 14 and 16 of the Constitution of India. Therefore, in our considered opinion, it is not a fit case in which we can grant arrears to the applicant. The punishment of the applicant by reduction of pay for 6 months vide NIP dated 8.4.96 and 4.6.96/17.6.96 (on appeal) being subsequent to panel dated 06.09.95 (modified vide Annexure A/2 dated 23.06.98) has no legal effect. In these circumstances, as stated above, the applicant is entitled for inclusion of his name in the panel dated 06.09.95 by modifying the subsequent order dated 23.06.98 (Annexure A/2)

and also for his notional promotion as per his ranking in the panel dated 06.09.95. Accordingly, we pass the order as under:-

"Application is partly allowed. The respondents are directed to include the name of the applicant in the panel dated 06.09.95 (Annexure A/1) by modifying their subsequent order dated 23.06.98 (Annexure A/2) by placing his name in the panel according to his ranking. His notional seniority may be fixed accordingly on the basis of his ranking. However, the applicant is not entitled to any arrears. The parties shall bear their own costs."


(GOPAL SINGH)

Adm. Member

cvr.


(JUSTICE B.S. RAIKOTE)

Vice Chairman